**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGMENT NO.536 OF** 2003

**IN**

**SUMMARY SUIT NO.995 OF** 2003

Sunil S.Kaushik .. Plaintiff

versus

Broadcast Worldwide Ltd .. Defendant

...

Mr.P.R.Biyani i/b Ms Anjali Ganatra for Plff

Ms.Smruti Kharade i/b Anil Menon for Defendant

**CORAM : D.G. KARNIK, J**

**DATED : 2nd March, 2005.**

**P.C:-**

1. Heard learned counsel for the parties. The plaintiff was employed by the defendant under a letter of appointment dated 6th November, 2000 (Exhibit A to the plaint). Clause 9.3 of the said letter provides that either party may terminate the contract of employment by giving three months notice or remuneration in lieu thereof. By a letter dated 3rd

May, 2001 the defendant was confirmed in service. However, by a letter dated 31st January, 2002 delivered to the plaintiff on 12th February, 2002 services of the plaintiff were terminated. The letter of termination states that dues were calculated in accordance with the terms of the contract would be cleared by the defendants by 31st March, 2002. However, according to the plaintiff, dues were not cleared. Hence the plaintiff has filed this suit.

2. The plaintiff was paid salary only up to November, 2001. The plaintiff has therefore sued for the salary from 1st December, 2002 till 12th February, 2002. In addition, the plaintiff has claimed salary of three months in lieu of the notice udner clause 9.3 of the terms of the appointment letter.

3. By filing an affidavit in reply the defendant has raised only one defence namely that there is an arbitration agreement between the parties and therefore the dispute needs to be referred to arbitration. Clause 15 of the letter of appointment provides that all disputes and differences arising out of or pertaining to the agreement shall be referred to the sole arbitration of the Managing Director of the

defendant company. Clause 15 contemplates existence of disputes and differences arising out of the agreement. In whole of the affidavit in reply the defendant has not stated what is the dispute between the plaintiff and the defendant that needs to be referred to arbitration. The letter of termination dated 31st January, 2002 (Exhibit C to the plaint) issued by the defendant itself states that the defendant would clear all the dues of the plaintiff by 31st March, 2002. No dispute is raised by the defendant as to payment of salary from 1st November, 2002. Similarly, no dispute has been raised by the defendant for non payment of three months salary in lieu of notice as per clause 9.3 of the appointment letter. In absence of any dispute, there is nothing which needs to be referred to arbitration.

4. In the circumstances, there is no defence available to the defendants. However, merely as an act of mercy, I am inclined to grant conditional leave to the defendant subject to its depositing in Court the amount claimed in the suit. Hence, I pass the following order :

" The defendant is granted conditional leave

to defend the suit subject to its depositing in Court a sum of Rs.1,59,000/- within four weeks. On such deposit the plaintiff shall be entitled to withdraw the same by furnishing security to the satisfaction of the Prothonotary and Senior Master. On failure to deposit, the plaintiff shall have liberty to apply. On deposit of the amount the suit shall stand transferred to the list of commercial causes. The defendant shall file the written statement within a period of one month."

**D.G.KARNIK, J**